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(Original Signature of Member)

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To authorize the Federal Trade Commission, in consultation with the Federal Communications Commission, to review volume usage service plans of major broadband Internet service providers to ensure that such plans are fairly based on cost.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. MASSA introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_  
\_\_\_\_\_

**A BILL**

To authorize the Federal Trade Commission, in consultation with the Federal Communications Commission, to review volume usage service plans of major broadband Internet service providers to ensure that such plans are fairly based on cost.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Broadband Internet  
5       Fairness Act”.

1   **SEC. 2. FINDINGS.**

2       Congress finds the following:

3           (1) Increased deployment and adoption of  
4       broadband, including high-bandwidth uses of  
5       broadband, is key to allow broadband stimulus funds  
6       to produce maximal economic recovery and growth,  
7       and is key to the network effects of economic benefit  
8       associated with the Internet.

9           (2) No volume usage service plan for broadband  
10      Internet access can be just and reasonable unless  
11      charges are fairly based on the cost of the usage.

12          (3) Volume usage charges for broadband Inter-  
13      net access that are substantially above cost in a  
14      market without sufficient competition constitute an  
15      unfair and unconscionable practice, as substantially  
16      above-cost pricing has anti-competitive and anti-con-  
17      sumer effects on Internet use, including in particular  
18      Internet use for online video delivery.

19          (4) The market for video delivery is effectively  
20      controlled by companies operating both traditional  
21      cable delivery and broadband Internet access serv-  
22      ices, increasing incentives to raise prices for Internet  
23      use in high volumes, to discourage consumers who  
24      may wish no longer to subscribe to traditional cable  
25      services.

1           (5) The Federal Trade Commission Act author-  
2           izes the Federal Trade Commission to investigate  
3           and remedy consumer pricing practices that it deter-  
4           mines to be unfair or anti-competitive, including  
5           pricing practices by Internet service providers, as  
6           Internet services are not provided on a common car-  
7           rier basis and therefore are not subject to the com-  
8           mon carrier limitation on Federal Trade Commission  
9           jurisdiction.

10 **SEC. 3. UNJUST, UNREASONABLE, OR UNREASONABLY DIS-**  
11 **CRIMINATORY VOLUME USAGE SERVICE**  
12 **PLANS.**

13       (a) PROHIBITION.—It shall be unlawful for major  
14 broadband Internet service providers to offer volume usage  
15 service plans imposing rates, terms and conditions that  
16 are unjust, unreasonable, or unreasonably discriminatory.

17       (b) SERVICE PLAN ANALYSIS FILING REQUIRED.—  
18 Major broadband Internet service providers offering, or  
19 proposing to offer, volume usage service plans to any por-  
20 tion of their service territory are required to file with the  
21 Federal Trade Commission a service plan analysis that—

22           (1) identifies the different service tiers of  
23 broadband Internet service to be offered on the basis  
24 of different data transmission volumes;

1           (2) specifies the different rates, terms, and con-  
2           ditions to be imposed for such tiers;

3           (3) provides an analysis of the economic reason-  
4           ableness and necessity for imposing such tiers—

5                 (A) based on assigning the capital costs of  
6                 deploying the facilities needed to provide such  
7                 different service tiers;

8                 (B) based on assigning different operating  
9                 costs, if any, that are attributable to the provi-  
10                sion of different service tiers; or

11                (C) based on other factors and costs speci-  
12                fied by the provider as a justification for the  
13                proposed volume usage service plan;

14           (4) assess the impact of such service tiers on  
15           the ability of residential consumers to access widely  
16           used Internet services, including uses for agricul-  
17           tural, medical, educational, environmental, library,  
18           and nonprofit purposes; and

19           (5) specifies the basis upon which the different  
20           rates of charges under the service plan will be re-  
21           vised over the following 3 years, and inflation factors  
22           or other variables that will be used to calculate or  
23           limit such revisions.

1   **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**  
2                                   **SION.**

3           (a) **ENFORCEMENT BY FTC.**—The Commission shall,  
4 in consultation with the Federal Communications Com-  
5 mission, review each service plan analysis submitted under  
6 section 3(b) in order to determine whether the volume  
7 usage service plan is in violation of section 3(a). A viola-  
8 tion of section 3(a) shall be treated as a violation of a  
9 rule defining an unfair or deceptive act or practice pre-  
10 scribed under section 18(a)(1)(B) of the Federal Trade  
11 Commission Act (15 U.S.C. 57(a)(1)(B)). The Federal  
12 Trade Commission shall enforce this Act in the same man-  
13 ner, by the same means, and with the same jurisdiction  
14 as though all applicable terms and provision of the Federal  
15 Trade Commission Act were incorporated into and made  
16 a part of this Act.

17           (b) **REVIEW AND REMEDIATION.**—After an initial re-  
18 view of any service plan analysis submitted under section  
19 3(b), if the Commission identifies any elements of such  
20 plan that appear to constitute a violation of section 3(a),  
21 the Commission shall notify the provider submitting such  
22 plan of such elements and of the steps the provider may  
23 take to correct such violations. The Commission shall,  
24 prior to initiating any action under subsection (e), review  
25 the steps taken by the provider to correct such violations.

1 (c) FACTORS CONSIDERED.—In determining whether  
2 a major broadband Internet service provider has violated  
3 section 3(a), the Commission, in consultation with the  
4 Federal Communications Commission, shall take into ac-  
5 count, among other factors—

6 (1) whether the service plan analysis filed with  
7 the Commission does not properly assign operating  
8 costs to each of the service tiers within the volume  
9 usage service plan;

10 (2) whether the rates, terms and conditions are  
11 not justified by the costs of deploying or operating  
12 the facilities required to provide and maintain the  
13 service tiers within the volume usage service plan;

14 (3) whether the volume usage service plan im-  
15 poses unjust, unreasonable, or unreasonably dis-  
16 criminatory charges on residential consumers; and

17 (4) whether the volume usage service plan de-  
18 terts or impedes—

19 (A) the deployment of and access to widely  
20 used Internet applications and services; or

21 (B) the participation of residential con-  
22 sumers in the growth and development of re-  
23 gional, national, and international economies;

24 (5) whether the volume usage service plan un-  
25 fairly penalizes consumers choosing to use high

1 bandwidth Internet applications and services, includ-  
2 ing those used for one-way or two-way video;

3 (6) whether the volume usage service plan has  
4 anti-competitive effects on the market for video de-  
5 livery or the markets for Internet applications or  
6 services;

7 (7) whether the volume usage service plan im-  
8 poses anti-consumer rates, terms, or conditions that  
9 reflect insufficient competition in the local market  
10 for broadband Internet services; or

11 (8) whether the volume usage service plan fails  
12 to comply with such other factors as the Commis-  
13 sion, in consultation with the Federal Communica-  
14 tions Commission, determines to be appropriate as  
15 set forth in the rules prescribed under section 5.

16 (d) HEARINGS.—As a component of its review of each  
17 plan submitted under subsection (a), the Commission  
18 shall, after the provider submitting such plan has had an  
19 opportunity to take steps under subsection (b) to correct  
20 any violations identified by the Commission in its notice  
21 to the provider under such subsection, provide for the con-  
22 duct of a public hearing by a Commissioner or other des-  
23 ignated employee of the Commission, and for the collection  
24 of public comment and testimony with respect to such  
25 plan. Such hearing shall be conducted in a such a commu-

1 nity or communities in such State or States as the Com-  
2 mission determines are most directly affected by the vol-  
3 ume usage service plan.

4 (e) CIVIL PENALTIES.—

5 (1) Notwithstanding the penalties set forth  
6 under the Federal Trade Commission Act, any  
7 major broadband Internet service provider who vio-  
8 lates section 3(a) shall be subject to injunctive relief  
9 requiring the broadband Internet service provider  
10 proposing or offering such plan to suspend, termi-  
11 nate, or revise such plan.

12 (2) In addition to injunctive relief, any major  
13 broadband Internet service provider who violates sec-  
14 tion 3(a) may be subject to a fine of not more than  
15 \$1,000,000, as the Commission determines is re-  
16 quired to ensure ongoing compliance with this Act.

17 **SEC. 5. COMMISSION RULEMAKING REQUIRED.**

18 Within 180 days after the date of enactment of this  
19 Act, the Commission shall, by rule prescribed in accord-  
20 ance with section 553 of title 5, United States Code, estab-  
21 lish procedures for the review of volume usage service  
22 plans and for the conduct of public hearings pursuant to  
23 the requirements of this Act.



1 **SEC. 6. EFFECT ON OTHER LAWS.**

2 Nothing in this Act shall be construed to limit the  
3 authority of the Commission to bring enforcement actions  
4 or take other measures under the Federal Trade Commis-  
5 sion Act or any other provision of law.

6 **SEC. 7. DEFINITIONS.**

7 (a) IN GENERAL.—For purposes of this Act:

8 (1) COMMISSION.—The term “Commission”  
9 means the Federal Trade Commission.

10 (2) BROADBAND INTERNET SERVICE.—The  
11 term “broadband Internet service” means an Inter-  
12 net protocol-based transmission service that enables  
13 users to send and receive voice, video, data, graph-  
14 ics, or a combination thereof.

15 (3) BROADBAND INTERNET SERVICE PRO-  
16 VIDER.—The term “broadband Internet service pro-  
17 vider” means any person who provides or offers to  
18 provide broadband Internet service, either directly or  
19 through an affiliate.

20 (4) MAJOR BROADBAND INTERNET SERVICE  
21 PROVIDER.—The term “major broadband Internet  
22 service provider” means a broadband Internet serv-  
23 ice provider that, either directly or through an affil-  
24 iate, provides broadband Internet service to  
25 2,000,000 or more subscribers, as further defined by

1 the rules prescribed by the Commission pursuant to  
2 section 5.

3 (5) VOLUME USAGE SERVICE PLAN.—The term  
4 “volume usage service plan” means any choice of  
5 broadband Internet service offerings to a residential  
6 consumer that includes two or more different sets of  
7 rates, terms, or conditions that are directly or indi-  
8 rectly based upon the amount of data actually trans-  
9 mitted to or from the consumer within a fixed period  
10 of time.

11 (6) RESIDENTIAL CONSUMER.—The term “resi-  
12 dential consumer” includes any individual consumer  
13 who subscribes to broadband Internet services pri-  
14 marily for purposes other than a for-profit business  
15 purpose, and includes subscribers that are nonprofit  
16 organizations or institutions of higher education.

17 (b) COMMON TERMINOLOGY.—Except as otherwise  
18 provided in subsection (a), terms used in this Act have  
19 the meanings provided under section 3 of the Communica-  
20 tions Act of 1934 (47 U.S.C. 153) and section 602 of such  
21 Act (47 U.S.C. 522).